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CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 403

HENRY RAGONTON RABANG, PETITIONER

v.

JOHN P. BOYD, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. App. 19–21) is reported at 234 F. 2d 904.

JURISDICTION

The judgment of the Court of Appeals was entered June 14, 1956 (R. 113). The petition for a writ of certiorari was filed September 10, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether a Filipino who has resided in the United States since he entered as a national in 1930 could

properly be treated as an alien after Philippine independence in 1946.

2. Whether, under a statute providing for the deportation of "any alien" thereafter convicted of narcotics violations, petitioner could be deported on the basis of a 1951 narcotics violation although his entry into the United States had been as a national.

STATUTES INVOLVED

The Act of February 18, 1931, 46 Stat. 1171, as amended, by the Act of June 28, 1940, 54 Stat. 673, 8 U. S. C. (1946 ed.) 156a provided:

> Any alien (except an addict who is not a dealer in, or peddler of, any of the narcotic drugs mentioned in this Act) who, after February 18, 1931, shall be convicted for violation of or conspiracy to violate any statute of the United States or of any State, Territory, possession, or of the District of Columbia taxing, prohibiting, or regulating the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, or any salt, derivative, or preparation of opium or coca leaves, shall be taken into custody and deported in manner provided in sections 19 and 20 of the Act of February 5, 1917, entitled "An Act to regulate the immigration of aliens to, and the residence of aliens in, the United States."

The Act of March 24, 1934, known as the "Philippine Independence Act", 48 Stat. 456, c. 84, provided in pertinent part:

* * * * *

SEC. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all the provisions thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

STATEMENT

Petitioner, who was born in the Philippine Islands in 1910, entered the United States in 1930 and has since resided in this country (R. 33). On February 12, 1951, he was convicted of selling and giving away narcotics in violation of 26 U. S. C. 2554 (a) and was placed on three years' probation, with a six month sentence suspended (R. 56–60). On the basis of this conviction, he was ordered deported under the provisions of the Act of February 18, 1931, as amended, *supra*, p. 2 (R. 26–28). After the decision of this Court in *Barber* v. *Gonzales*, 347 U. S. 637, holding that entry as a national was not an "entry" for the purposes of the immigration laws, the acting regional commissioner requested the Board of Immigration Appeals to reconsider the case (R. 21–22). The Board declined to reopen the proceedings, holding that under the statute pursuant to which petitioner was ordered deported, entry as an alien was not essential to deportability, the statute requiring only that the person to be deported be an alien who had been convicted for violation of any law regulating traffic in narcotics (R. 17–20).

Petitioner thereafter instituted this action attacking the deportation order in the United States Dis-

trict Court for the Western District of Washington, alleging that (1) he was not an alien, and (2) since he had made no entry into the United States in the technical sense that entry is used in the immigration law, he was not subject to deportation (R. 4–10). The district court dismissed the petition (R. 98–102), and the court of appeals affirmed (R. 113).

ARGUMENT

1. The contention that Filipinos who were legal residents of the United States at the time of Philippine independence in 1946 did not lose their status as United States nationals, and did not become aliens, despite the clear wording of Section 14 of the Independence Act (*supra*, p. 2),[1] has repeatedly been rejected by the court below. *Resurreccion-Talavera* v. *Barber*, 231 F. 2d 524; *Mangaoang* v. *Boyd*, 205 F. 2d 553, certiorari denied, 346 U. S. 876; *Gonzales* v. *Barber*, 207 F. 2d 398, affirmed on other grounds, 347 U. S. 637; *Cabebe* v. *Acheson*, 183 F. 2d 795.[2] While this Court did not reach the point in its decision in *Barber* v. *Gonzales*, 347 U. S. 637, the intent and power of Congress to provide that, after Philippine independence, Philippine nationals should be aliens in relation to the United States, was extensively discussed in the reply brief for petitioner in that case

[1] Since the period from 1934 to 1946 has no relevancy to the problems of this case, it is unnecessary to consider the effect of Section 8 (a) of the Philippine Independence Act which declared that, even before full independence, citizens of the Islands who were not citizens of the United States, should be treated as aliens for the purposes of the immigration laws.

[2] The question does not appear to have arisen in other circuits.

(No. 431, O. T. 1953), to which we respectfully refer the Court.

2. The statute under which petitioner was ordered deported, former 8 U. S. C. 156 (a) (*supra,* p. 2), requires the deportation of "any alien", except an addict who is not a peddler, "who, after February 18, 1931, shall be convicted" of violations of the narcotics laws. Unlike the statute involved in *Barber* v. *Gonzales,* 347 U. S. 637, the conditions which give rise to deportability are not related to the "entry" of the alien, but to the effective date of the statute. Petitioner was convicted of selling narcotics in 1951, after Philippine independence, when he was an alien, and at a time when the particular offense involved had for many years been grounds for deportation. His deportation, was, therefore, required under the statute. See *Eichenlaub* v. *Shaughnessy,* 338 U. S. 521, where the Act of May 10, 1920, 41 Stat. 593, which provided for the deportation of aliens convicted of espionage after 1914, was held to render deportable a former naturalized citizen whose citizenship had not been revoked, and who therefore did not have the status of an alien at the time the offense was committed.

Petitioner attempts to make "entry" an implied condition of deportability by an involved process of reasoning to the effect that, since the Act of 1931 provides for deportation "in manner provided in sections 19 and 20 of the Act of February 5, 1917," the general provisions of Section 19 apply to his deportation, including the provision that Section 19 "with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned

irrespective of the time of their entry into the United States" (Pet. 4–5). Assuming his premise, the clause on which he relies making deportation applicable "irrespective of the time" of entry is certainly not the same as "after entry." It therefore does not serve to make entry a condition of deportability. As noted, the significant time under the Act of 1931 is "after February 18, 1931". And *Eichenlaub* v. *Shaughnessy*, 338 U. S. 521, where a denaturalized citizen was held deportable, is a sufficient answer to petitioner's argument that prior "entry" should be considered a requisite for deportation on the basis that it is essential to the power to deport.

The reports on the bill which became the Act of 1931 reveal merely a purpose to deport all aliens who thereafter engaged in the narcotics traffic (H. Rep. No. 1373, 71st Cong., 2d Sess.; S. Rep. No. 1443, 71st Cong., 3d Sess.), with an extension of grace suggested on the floor of the House for addicts who were not peddlers (72 Cong. Rec. 10324, 12366). There is nothing in this history to show that Congress regarded as significant any fact other than the alienage which was necessary to support deportation, and the fact of conviction for trading in narcotics. Petitioner, as an alien convicted of trading in narcotics, falls within the plain language and clear intendment of the statute.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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